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FILE # ML-45103-07

ID # 045103

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January 12, 2007

RQ-0562-GA

Ms. Nancy S. Fuller
Chair, Opinion Committee
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

Dear Ms. Fuller:

Del Mar College is a two year institution of higher education based in Corpus Christi, Texas. The college is governed by a board of regents elected by the voters of the Del Mar College district.

Questions have arisen regarding the residency of a recently elected member of the board of regents. Before these questions can be investigated resulting in a possible criminal prosecution, an apparent conflict in some pertinent statutes must be resolved. The purpose of this letter is to request a formal attorney general's opinion in answer to the following question.

When determining the eligibility requirements for candidates to the Del Mar Board of Regents, which is the controlling statute, Section 141.001 of the Texas Election Code or Section 130.082 of the Texas Education Code?

FACTS AND DISCUSSION

When conducting elections for positions on the board of regents, Del Mar officials have historically referred to Section 141.001 of the Texas Election Code as the governing statute in setting the residency requirements for all candidates. Specifically, subsection (a)(5)(B) of section 141.001 states as follows, "To be eligible to be a candidate for, or elected or appointed to, a public elective office in this state, a person must have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding the following date: for an independent candidate, the date of the regular filing deadline for a candidate's application for a place on the ballot." In other words, in order to qualify as a candidate for a regent position, a person would have to be a resident of the Del Mar district for a minimum of

six months prior to the application filing deadline. This is the provision that Del Mar officials have always applied.

However, as with many statutes, there are some exceptions in Election Code Section 141.001. Subsection (b) provides that "a statute outside this code supersedes subsection (a) to the extent of any conflict." Subsection (c) further provides that, "Subsection (a) does not apply to an office for which ... a statute outside this code prescribes exclusive eligibility requirements." The importance of these two subsections is underscored when we look to the Education Code for possible conflicts.

Section 130.082 of the Education Code deals specifically with the governing board of junior college districts. Subsection (g) of that same section provides, inter alia, as follows, "Any resident, qualified elector of the district may have his or her name placed as a candidate on the official ballot for any position to be filled at each regular election by filing with the secretary of the board a written application therefore signed by the applicant, not later than 5:00 p.m. of the 45th day before the date of the election." By not including a six month residency requirement in its language, subsection (g) seems to dispense with such a requirement in direct contradiction of Section 141.001 of the Election Code. A plain reading of both provisions would seem to indicate that the requirements set out in the Education Code would be controlling.

The Attorney's General's Office has addressed this particular provision of the Education Code in a prior opinion. Texas Attorney General Opinion No. M-1101 issued on March 27, 1972 dealt with a question involving a candidate in a junior college district election who would not be 18 years of age until after the filing deadline for the position. In responding to the questions asked, the Attorney General determined that, "Under the provisions of Section 130.082, Texas Education Code, an individual holding a voter registration certificate entitling him to vote on the date of the election, is eligible for the office of trustee of a junior college district if he is a resident of the district." This opinion interprets the requirements for candidacy set out in the Education Code and determines that there are only two requirements: (1) qualified to vote on the date of the election and (2) a resident of the district. This opinion also fails to mention any six (6) month residency requirement (because there isn't any in the statute). Once again, this seems to be in direct conflict with the provisions of the Election Code.

Counsel for Del Mar College requested an informal opinion from the Texas Secretary of State regarding this matter and received an e-mailed response. The Secretary of State declared that "There is no direct conflict between the provisions of the Education Code regarding candidate requirements and the Election Code provisions for candidate requirements. Therefore, these provisions should both be read as applicable to the election of a community college district trustee." However, as written, the opinion from the Secretary of State is based on an interpretation of Subsection (f) of Section 130.082. Subsection (g), which is the relevant provision which raises the possible conflict, is not even mentioned in the Secretary of State's informal opinion. Therefore, the question still remains unanswered.

A question similar to the one hereby submitted was posed and answered by the Attorney General's Office in Opinion No. DM-89 issued February 7, 1992. That question involved an apparent conflict between the provisions of the Election Code and the similar provisions of the Local Government Code with respect to the requirements for candidacy to the office of Alderman in a type B general law city. The opinion, while citing Brown vs. Patterson, 609 SW 2d 287 (TX. Civ. App.-Dallas 1980, no writ), determined that there was no conflict between the statutes.

Brown addresses an issue almost exactly like the issue posed herein. In Brown the court resolves an alleged conflict involving residency requirements between the Election Code provisions and a statute providing for the election of school trustees. The Court, after analyzing the legislative history of each particular statute, determines and holds that there is no conflict between the statutes and therefore the six month residency requirement of the Election Code should prevail.

Although the holding in Brown would seem to be applicable in our case, there are some differences that are significant. Our question involves a completely different statute with different requirements. In light of the attorney general opinion interpreting the requirements of Section 130.082 of the Education Code, we thought that further clarification as to any possible conflict might be appropriate under these circumstances.

It would seem that the provisions of the Education Code should supersede the Election Code when determining the eligibility of a candidate for a position on the Del Mar Board of Regents. Your response to the question posed would assist us in resolving the issues that have arisen in this matter and would assist us in making some possible prosecutorial decisions in the future.

I thank you in advance for your kind assistance in the past and with these issues.

Respectfully,



Carlos Valdez
District Attorney

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